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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-----------------|----------------------|---------------------|------------------|
| 10/603,336 | 06/26/2003 | Namon A. Nassef | 230339 | 2851 |
| | 7590 12/27/2004 | | | |
| Peter Loffler P.O. Box 1001 Niceville, FL 32588-1001 | | | | |
| EXAMINER ROWAN, KURT C | | | | |
| ART UNIT 3643 | | PAPER NUMBER | | |

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/603,336 | NASSEF, NAMON A. | |
| | Examiner | Art Unit | |
| | Kurt Rowan | 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 7-11, 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spinelli 6,581,322 in view of Wentzell et al for substantially the same reasons stated in the last Office Action.

The patent to Spinelli '322 shows a chummer having a housing 11 having an inlet port 33b and an outlet port 33b in disc 33 and an opening for receiving bait. Spinelli shows a motor 40 attached to the housing and a shaft 31 extending through the housing. Spinelli shows a first cutting blade 35 attached to the housing by way of shaft 31 and an impeller blade 36 attached to the shaft 31 in Fig. 6a. Spinelli shows an opening 12 for receiving bait. Spinelli shows a top cap 42, 43, a bottom cap 60. Spinelli discloses the chummer mounted on a boat above the surface of the water in column 2, lines 20-22. The patent to Wentzell shows a chummer having a housing 14 with inlet and outlet ports 16, 16; a shaft 30 mounted axially in the housing with a first cutting blade assembly 36. Wentzell shows a top cap 26 and a bottom cap 28. Wentzell shows the chummer placed in water in Fig. 2 with the inlet and outlet ports beneath the water line. In reference to claims 1 and 9, it would have been obvious to provide Spinelli with inlet

and outlet ports beneath the water line as shown by Wentzell for the purpose of mixing the bait with water to output a more homogenous mix. Further, the impellor blade located between the inlet port and the outlet port and below the first cutting blade would have been an obvious variation since the rearrangement of the location of parts has been held to be obvious. See *In re Japikse*, 86 USPQ 70. In reference to claims 2 and 10, Spinelli shows an electric motor 40. In reference to claims 3 and 11, Spinelli does not disclose that the motor is reversible, but it would have been obvious to employ a reversible motor to prevent jamming of the bait in the housing. The examiner takes Official Notice that reversible motors are old and well known. In reference to claims 7-8, 15-16, Spinelli shows a mounting bracket 20 attached to the housing. It would have been obvious to pivotally attach the mounting bracket to the housing for the purpose of shifting the housing out of the way when not in use. The examiner takes Official Notice that pivotal mounting brackets are old and well known in the art. In reference to claims 17-18, Wentzell shows the end of the shaft 30 received in a bearing assembly (not labeled but the bearing assembly is taken as the top part of bottom plug 28 as shown in Fig. 1) attached to the removable bottom cap 28 as disclosed in column 2, lines 33-37.

Claims 4-6, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spinelli' 322 in view of Wentzell as applied to claim 1 above, and further in view of Stanish et al. '921 for substantially the same reasons stated in the last Office Action.

The patents to Spinelli, Wentzell and Stanish show chumming devices. Spinelli and Wentzell have been discussed above. In reference to claim 4, Stanish shows a

chumming device with a housing 6, a shaft 1 mounted in the housing noting Figs. 1-2 and having a plurality of blades 8 mounted on the shaft as shown in Fig. 3. In reference to claims 4 and 12, it would have been obvious to provide the chumming device of Spinelli as modified by Wentzell with a plurality of blades as shown by Stanish to cut the bait more effectively. In reference to claims 5, 6 and 13, 14; Stanish shows cutters 8 and spacers 11 mounted on the shaft, but does not disclose changing the distance between the blades. However, it would have been obvious to employ a changeable distance between blades for the purpose of cutting-up different sized fish and for producing chum of different sizes for different fishing conditions.

Response to Arguments

Applicant's arguments filed Oct. 19, 2004 have been fully considered but they are not persuasive. Applicant argues that locating the inlet and outlet ports of Spinelli below the water line as shown by Wentzell will not result in a more homogenous mix, but this is incorrect since the addition of water would dilute the chum and therefore make it more homogenous. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

the knowledge is generally available to one of ordinary skill in the art. Applicant argues that the blade 36 of Spinelli being a horizontal blade is not designed to move water between an inlet port and an outlet port and therefore not an impellor blade. However, since the blade rotates, and when modified by Wentzell, the rotation of the blade in water would cause turbulence which would move water between an inlet port and an outlet port.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

Application/Control Number: 10/603,336
Art Unit: 3643

Page 6

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR